

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

HUNG M. NGUYEN,

Plaintiff,

v.

CACHE CREEK CASINO RESORT,

Defendant.

No. 2:20-cv-01748-TLN-KJN

**ORDER**

Plaintiff Hung M. Nguyen (“Plaintiff”), proceeding *pro se*, has filed this civil action. (ECF No. 1.) The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On January 4, 2021, the magistrate judge filed findings and recommendations which were served on the parties and which contained notice that any objections to the findings and recommendations were to be filed within fourteen (14) days. (ECF No. 31.) On January 6, 2021, Plaintiff filed Objections to the Findings and Recommendations (ECF No. 32), which have been considered by the Court. Concurrent with his Objections, Plaintiff additionally requests disqualification of the magistrate judge pursuant to 28 U.S.C. § 455 and 28 U.S.C. § 144, which the Court construes as a Motion to Recuse/Disqualify. (*Id.*) Also pending before the Court is Plaintiff’s Motion to Validate the Notification of State and Local Agency. (ECF No. 18.) The Court addresses these additional motions herein.

1 This Court reviews *de novo* those portions of the proposed findings of fact to which  
 2 objection has been made. 28 U.S.C. § 636(b)(1); *McDonnell Douglas Corp. v. Commodore*  
 3 *Business Machines*, 656 F.2d 1309, 1313 (9th Cir. 1981), *cert. denied*, 455 U.S. 920 (1982); *see*  
 4 *also Dawson v. Marshall*, 561 F.3d 930, 932 (9th Cir. 2009). As to any portion of the proposed  
 5 findings of fact to which no objection has been made, the Court assumes its correctness and  
 6 decides the motions on the applicable law. *See Orand v. United States*, 602 F.2d 207, 208 (9th  
 7 Cir. 1979). The magistrate judge's conclusions of law are reviewed *de novo*. *See Britt v. Simi*  
 8 *Valley Unified Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

9 Having reviewed the file under the applicable legal standards, the Court finds the Findings  
 10 and Recommendations to be supported by the record and by the magistrate judge's analysis.

11 Motion to Recuse/Disqualify

12 In his Objections to the Findings and Recommendations, Plaintiff requests that Magistrate  
 13 Judge Kendall J. Newman be recused and/or disqualified pursuant to 28 U.S.C. 455 and 28  
 14 U.S.C. § 144. (ECF No. 32 at 2.) To the extent Plaintiff's request may be construed as a Motion  
 15 to Recuse/Disqualify, the Court finds this Motion is without merit.

16 Federal law provides that a party may seek recusal/disqualification of a judge based on  
 17 bias or prejudice. 28 U.S.C. § 455 provides circumstances under which a district judge or  
 18 magistrate judge must disqualify himself. *See* 28 U.S.C. § 455. 28 U.S.C. § 144 provides  
 19 circumstances under which a party may seek recusal or disqualification of the judge:

20 Whenever a party to any proceeding in a district court makes and  
 21 files a timely and sufficient affidavit that the judge before whom the  
 22 matter is pending has a personal bias or prejudice either against him  
 or in favor of any adverse party, such judge shall proceed no further  
 therein, but another judge shall be assigned to hear such proceeding.

23 The affidavit shall state the facts and the reasons for the belief that  
 24 bias or prejudice exists, and shall be filed not less than ten days  
 25 before the beginning of the term at which the proceeding is to be  
 26 heard, or good cause shall be shown for failure to file it within such  
 time. A party may file only one such affidavit in any case. It shall be  
 accompanied by a certificate of counsel of record stating that it is  
 made in good faith.

27 28 U.S.C. § 144.

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1           The standard for recusal under 28 U.S.C. § 144 is “whether a reasonable person with  
 2 knowledge of all the facts would conclude that the judge’s impartiality might reasonably be  
 3 questioned.” *Mayes v. Leipziger*, 729 F.2d 605, 607 (9th Cir. 1984) (quoting *United States v.*  
 4 *Nelson*, 718 F.2d 315, 321 (9th Cir. 1983)). To provide adequate grounds for recusal, the  
 5 prejudice must result from an extrajudicial source since a judge’s previous adverse ruling alone is  
 6 not sufficient for recusal. *See id.* Indeed, a motion to disqualify a judge cannot be granted absent  
 7 a clear showing of “deep-seated favoritism or antagonism that would make fair judgment  
 8 impossible.” *United States v. McTiernan*, 695 F.3d 882, 891–92 (9th Cir. 2012) (quoting *Liteky*  
 9 *v. United States*, 510 U.S. 540, 555 (1994)). Furthermore, 28 U.S.C. § 144 expressly conditions  
 10 relief upon the filing of a timely and legally sufficient affidavit. Therefore, if the affidavit is  
 11 legally insufficient, then recusal can be denied. *See United States v. \$292,888.04 in U.S.*  
 12 *Currency*, 54 F.3d 564, 566 (9th Cir. 1995).

13           Here, Plaintiff provides no basis for his Motion, other than the bald assertion that the  
 14 magistrate judge’s recent Findings and Recommendations are “frivolous and ludicrous.” (ECF  
 15 No. 32 at 2.) Furthermore, the Court finds Plaintiff’s attached affidavit is legally insufficient  
 16 because Plaintiff fails to allege facts that would support the contention that the assigned  
 17 magistrate judge has exhibited bias or prejudice directed towards plaintiff from an extrajudicial  
 18 source. *See United States v. Sibla*, 624 F.2d 864, 868 (9th Cir. 1980) (“An affidavit filed pursuant  
 19 to [28 U.S.C. § 144] is not legally sufficient unless it specifically alleges facts that fairly support  
 20 the contention that the judge exhibits bias or prejudice directed toward a party that stems from an  
 21 extrajudicial source.”). Accordingly, to the extent Plaintiff’s objections may be construed as a  
 22 Motion to Recuse/Disqualify Magistrate Judge Kendall J. Newman, Plaintiff’s Motion is hereby  
 23 DENIED.

#### 24           Motion to Validate the Notification of State and Local Agency

25           A review of the docket additionally reveals Plaintiff’s Motion to Validate the Notification  
 26 of State and Local Agency is pending before the Court. (ECF No. 18.) In light of the Court’s  
 27 ruling to dismiss this action, Plaintiff’s Motion is DENIED as moot. (ECF No. 18.)

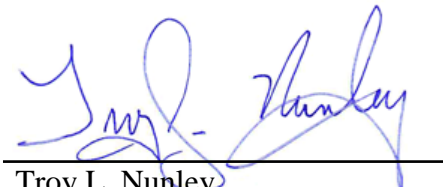
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Accordingly, IT IS HEREBY ORDERED that:

1. The Findings and Recommendations filed January 4, 2021 (ECF No. 31), are adopted in full;
2. To the extent Plaintiff's Objections to the Findings and Recommendations may be construed as a Motion to Recuse/Disqualify Magistrate Judge Kendall J. Newman, Plaintiff's Motion (ECF No. 32) is hereby DENIED;
3. Plaintiff's Motion for Sanctions (ECF No. 29) is DENIED;
4. Defendant's Motion to Dismiss (ECF No. 24) is GRANTED;
5. Plaintiff's Complaint (ECF No. 1) is DISMISSED with prejudice for lack of subject matter jurisdiction;
6. Plaintiff's Motion to Validate the Notification of State and Local Agency (ECF No. 18) is DENIED as moot; and
7. The Clerk of the Court is directed to close this case.

IT IS SO ORDERED.

DATED: February 12, 2021

  
Troy L. Nunley  
United States District Judge